

REMARKS

The final Office Action of May 27, 2009, has been reviewed and these remarks are responsive thereto. Claim 74 has been amended and claims 38-42, 44-49, and 76-79 have been cancelled without prejudice or disclaimer. Upon entry of this Amendment, claims 52-61, 64-71, 74, and 80-87 remain pending in this application. Reconsideration and allowance of the instant application are respectfully requested.

Rejections Under 35 U.S.C. § 102

Claims 38, 39, 42, 46-49, 52, 53, 56, 57, 60, 61, 65, 66, 69-71, 74, and 76-87 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,872,625 to Filley (hereinafter "Filley"). Applicant respectfully traverses these rejections.

Claims 38, 39, 42, 46-49, and 76-79 have been cancelled without prejudice or disclaimer, thereby rendering these rejections moot.

Claim 52 recites, among other features, a modular structure for receiving and transporting individuals or equipment, comprising a frame formed from a plurality of tubular frame portions, wherein the tubular frame portions are discrete and separable. Filley fails to teach or suggest the features of claim 52. The frame portion of Filley is, in fact, flat-surfaced. Filley clearly states, at column 7, lines 46-50, that the "flat-surfaced framework can also serve as attachment points ...for debris shielding and externally mounted hardware." These flat-surfaced frame portions are clearly shown in the figures of Filley and, in particular, FIG. 1. Accordingly, Applicant respectfully submits that claim 52 is patentably distinct from Filley.

Independent claim 74 has been amended to recite the tubular frame feature similar to claim 52 and is allowable for at least the same reasons as discussed above with respect to claim 52.

Claims 53, 56, 57, 60, 61, and 80-84, and claims 65, 66, 69-71, and 85-87, depend from claims 52 and 74, respectively, and are allowable for at least the same reasons as discussed above with respect to their respective base claims and further in view of the additional novel and non-obvious features recited therein. For example, claims 83 and 87 recite, among other features,

wherein the modular structure is cross shaped. The Office Action merely cites the disclosure of Filley as teaching this feature. However, there is no teaching or suggestion in the description or figures of Filley that teaches or suggests a modular structure that is cross shaped. Accordingly, Applicant submits that claims 83 and 87 are allowable over the cited reference.

Claims 82 and 86 recite, among other features, wherein at least one of the second units of the plurality of units is a medical center and at least another of the second units is a telecommunications center. There is no teaching or suggestion in Filley of a medical center or a telecommunications center. The Office Action asserts that the features of claims 82 and 86 constitute statements of intended use and “do not serve to patentably distinguish the claimed structure over that of the reference.” *See* the final Office Action at p. 7. Applicant respectfully disagrees. The features recited in claims 82 and 86 indicate a structure of at least one of the second units. As noted in the Office Action, “[a]pparatus claims cover what a device is not what a device does.” *Hewlett-Packard Co. v. Bausch & Lomb, Inc.*, 15 USPQ2d 1525, 1528. The recited features of claim 82 indicate what at least one of the second units is not what it does. Accordingly, Applicant respectfully submits that claim 82 is allowable over Filley.

Claim Rejections Under 35 U.S.C. § 103

Claims 40, 41, 54, 55, and 64 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Filley in view of U.S. Patent No 7,210,707 to Schroth (hereinafter “Schroth”). Applicant respectfully traverses these rejections.

Claims 40 and 41 have been cancelled without prejudice or disclaimer, thereby rendering these rejections moot.

Claims 54, 55 and 64 depend from claims 52 and 74, respectively, and are allowable for at least the same reasons as their base claims. The addition of Schroth fails to cure the deficiencies of Filley with respect to claims 52 and 74. Thus, Applicant requests withdrawal of these rejections.

Claims 44, 45, 58, 59, 67, and 68 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Filley in view of U.S. Patent Publication No. 2003/0148693 to Erb Jr. et al. (hereinafter "Erb"). Applicant respectfully traverses these rejections.

Claims 44 and 45 have been cancelled without prejudice or disclaimer, thereby rendering these rejections moot.

Claims 58, 59, 67, and 68 depend from claims 52 and 74, respectively, and are allowable for at least the same reasons as their base claims. The addition of Erb fails to cure the deficiencies of Filley with respect to claims 52 and 74. Accordingly, Applicant respectfully requests withdrawal of these rejections.

CONCLUSION

If any fees are required or if an overpayment is made, the Commissioner is authorized to debit or credit our Deposit Account No. 19-0733, accordingly.

All rejections having been addressed, applicants respectfully submit that the instant application is in condition for allowance, and respectfully solicit prompt notification of the same.

Respectfully submitted,

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Dated: July 24, 2009

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